



136005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

APR 09 1991

REPLY TO ATTENTION OF:
SHS-12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Columbus Scrap Site

Dear Sir:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Alvin Liebling Assistant Regional Counsel, at (312) 886-6842 or Steven Renninger On-Scene Coordinator, at (216) 942-7260.

Sincerely yours,

A handwritten signature in cursive script that reads "David A. Ullrich".

David A. Ullrich, Director
Waste Management Division

Enclosure

cc: Deputy Director, Ohio Environmental Protection Agency
Alvin Liebling, ORC Attorney
Steven Renninger, OSC

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V**

IN THE MATTER OF:	)	Docket No. V-W- '91 -C- 095
)	
Columbus Scrap Corporation	)	ADMINISTRATIVE ORDER BY
	)	CONSENT PURSUANT TO
	)	SECTION 106 OF THE
	)	COMPREHENSIVE
Respondents:	)	ENVIRONMENTAL RESPONSE,
	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980
Columbus Scrap Corporation	)	as amended, 42 U.S.C.
CSX Transportation, Inc.	)	Section 9606(a)
)	
)	

PREAMBLE

The United States Environmental Protection Agency (U.S. EPA), Columbus Scrap Corporation and CSX Transportation, Inc. (Columbus Scrap and CSX), Respondents, have each agreed to the making and entry of this Order by Consent.

It is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

A copy of this Order will also be provided to the State of Ohio, which has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondents to undertake and complete emergency removal activities to abate conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at the site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Columbus Scrap site (Facility) is an operating scrap facility located at 580 Furnace Street in Columbus, Franklin County, Ohio. The area is zoned for industrial use. It is approximately six (6) acres in size. See Attachment A, drawing.
2. CSX, as owner, leased the Facility property to Columbus Scrap beginning in 1985.
3. On May 25, 1989, Ohio EPA (OEPA) as authorized by the U.S. EPA TSCA Program conducted an inspection of the Facility. Inspectors noted eight large capacitors and visible soil contamination during the site walkthrough. A soil sample obtained by OEPA during the inspection documented the sample to contain 1,000 ppm Polychlorinated Biphenyl (PCB) 1242.
4. On February 23, 1990, OEPA and Chemical Waste Management, contracted by Columbus Scrap, obtained split soil samples at the Facility based on a grid sampling plan of the capacitor area. Composite soil samples analyzed by OEPA's contracted laboratory indicated the presence of 8,700 ppm PCB.
5. In correspondence of Bricker & Eckler to U.S. EPA, dated June 8, 1990, Columbus Scrap sampling results prior to two (2) partial cleanups of PCB by Columbus Scrap indicated surface soil contamination at capacitor locations up to 110,000 ppm PCB.
6. On July 27, 1990, the U.S. EPA Technical Assistance Team (TAT) conducted a site assessment at the Columbus Scrap Facility after the first of the two (2) partial cleanups. Soil samples were then obtained from two (2) of five (5) PCB capacitor locations where the first partial cleanup had occurred, as well as four (4) random locations outside of the capacitor areas. The soil sample laboratory results indicated the capacitor areas contained up to 108 ppm PCB and the random locations contained soil concentrations up to 279 ppm PCB.
7. The second partial cleanup of the PCB capacitor locations was conducted by Columbus Scrap after the TAT site assessment. The results of this cleanup have not been confirmed by U.S. EPA. A report documenting this partial cleanup was submitted to the U.S. EPA TSCA program on October 24, 1990.

8. PCB's have been shown to produce a variety of adverse effects in studies of aquatic organisms and experimental animals. Such effects are related to the dose of PCB's received, a higher dose producing a greater effect. Effects of PCB's observed in experimental animals include: weight loss, liver injury, atrophy of lymphoid tissue, with suppression of immune response, reproductive impairment (such as infertility and low birth rate), carcinogenicity, and death.
9. Persons exposed to PCBs can develop chloracne, and based on laboratory animal data, there is potential for reproductive effect and developmental toxicity, as well as oncogenicity in humans exposed to PCB's. PCB's are very stable compounds, which can persist for years when released into the environment. Based upon documented health impacts on humans and experimental results with laboratory animals, PCBs are a suspected human carcinogen.
10. Except for the front of the Facility, the facility was observed to be unsecured, without fences, walls, gates or other access restrictions apparent.
11. On September 13, 1990, U.S. EPA issued a General Notice of Potential Liability to the Potentially Responsible Parties: Columbus Scrap Corporation, Gary Reynolds, Vice President, and CSX Transportation Company.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. The Columbus Scrap site is a "facility", as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Each Respondent is a "person", as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
3. Each Respondent either arranged for disposal or transport for disposal of hazardous substances at the Columbus Scrap Facility, or is a past or present owner or operator of the Facility. Each Respondent is, therefore, a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607.
4. PCB's are "hazardous substances", as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. PCB contaminated soil constitutes an actual or threatened "release", as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

6. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.

7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment.

8. The conditions present at the Facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.415(b)(2). These factors include, but are not limited to, the following:

- a. **actual or potential exposure to hazardous substances by nearby populations, animals, or the food chain from hazardous substances or pollutants or contaminants;**

This factor is present at the Facility due to the existence of PCB contaminated soil at levels above 50 ppm. Prior to the first partial cleanup, PCB soil concentration at a capacitor location was documented at levels up to 8,700 ppm. Unrestricted access to areas documented as PCB contaminated exist, creating a potential exposure pathway.

- b. **high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;**

This factor is present at the Facility due to the existence of PCB contaminated soils at levels up to 8,700 ppm. Soil sampling at the Facility has documented contamination at the surface and to a depth of approximately two feet at several locations.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby ordered, and Respondents hereby agree that Respondents will undertake the following actions at the Facility:

1. Within thirty (30) calendar days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval, a Work Plan to determine the extent of PCB and other hazardous soil contamination at the Columbus Scrap Facility. The Work Plan shall provide a concise description and schedule of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or approve with modifications the Work Plan. Respondents shall implement the Work Plan as finally approved by U.S. EPA, including any modifications. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

2. Within thirty (30) calendar days of completion of the field work in the soil contamination investigation required by the approved Work Plan under the immediately preceding Paragraph 1, the Respondents shall submit to U.S. EPA a report regarding the site characterization which incorporates response activities required to remove, dispose and/or remediate all PCB and other hazardous soil contamination identified in the report. The PCB cleanup level of the remedy selected shall be consistent with the provisions of 40 CFR Part 761, Subpart G. The report shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or approve with modifications the report. Within fourteen (14) calendar days of final approval of the report, the Respondents shall submit a Work Plan based on the approved report. The Work Plan shall provide a concise description and schedule of the activities to be conducted to comply with the requirements of the approved report. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or approve with modifications the Work Plan. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

3. Each of the above Work Plans shall contain a site safety and health plan and a sampling and analysis plan. The site safety and health plans shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plans and other submitted documents shall demonstrate that the Respondents can properly conduct the actions required by this Order.

4. Respondents shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within five (5) business days of the effective date of this Order. The Respondents shall notify U.S. EPA of the name of subcontractors hired to perform the removal activities ordered in Paragraph 2 above no less than five (5) days in advance of commencing each activity. U.S. EPA retains the right to disapprove of any, or all, of the contractor and/or subcontractors retained by the Respondents. In the event U.S. EPA disapproves of a selected contractor and/or subcontractor, Respondents shall retain a different contractor and/or subcontractor to perform the work, and such selection shall be made within seven (7) calendar days following U.S. EPA's disapproval for a subcontractor substitution and fourteen (14) calendar days for a contractor substitution.

5. Within ten (10) calendar days after U.S. EPA approval of each of the above Work Plans, Respondents shall commence to implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondents to properly implement all aspects of a Work Plan shall be deemed to be a violation of the terms of this Order.

6. All materials removed from the Columbus Scrap Facility shall be disposed of or treated at a facility approved by the On-Scene Coordinator (OSC), which approval shall not be unreasonably withheld, and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.

7. Within fifteen (15) calendar days after the effective date of this Order, the Respondents shall designate a Project Coordinator. The U.S. EPA has designated Steven Renninger, of the Emergency and Enforcement Response Branch, Response Section I, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondents and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator. During implementation of the Work Plans, the OSC and the Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

8. The U.S. EPA and the Respondents shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made. Notification may initially be verbal, but shall promptly be reduced to writing.

9. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondents at the facility.

10. No extensions to the time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

11. This Order and all instructions by the U.S. EPA On-Scene Coordinator or designated alternate consistent with the National Contingency Plan and this Order shall be binding upon the Respondents, and the employees, agents, contractors, subcontractors, successors, and assigns of the Respondents. For the purpose of this Order, Respondents are jointly and severally responsible for carrying out all actions required by this Consent Order.

12. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondents, Respondents shall attempt to obtain all necessary access agreements. In the event that after using their best efforts, Respondents are unable to obtain such agreements, Respondents shall immediately notify U.S. EPA, and U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate. Respondents shall reimburse U.S. EPA for all attorneys' fees and court costs it incurs in assisting Respondents to obtain access. Nothing in this Order shall be construed as restricting the inspection or access authority of U.S. EPA under any law or regulation.

13. Respondents shall provide access to the Facility to U.S. EPA employees, and U.S. EPA-authorized contractors, agents, and consultants at anytime, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples, to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary. If U.S. EPA elects to take its own samples under this Consent Order, it shall provide a reasonable prior notification to the Project Coordinator and provide split or duplicate samples to the Project Coordinator upon request.

14. This Order shall be effective on the date of signature by the U.S. EPA Waste Management Division Director. Respondents shall be notified by U.S. EPA no later than the day following the date of signature by the Director via fax or Federal Express.

15. Respondents shall provide a written monthly progress report to the On-Scene Coordinator regarding the actions and activities undertaken under this Order. At a minimum, these progress reports shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by the Respondents and shall describe all significant work items planned for the next month. Monthly reports shall be submitted to the On-Scene Coordinator on the last business day of each month. A final report shall be due within thirty (30) calendar days of completion of removal activities.

16. Respondents agree to retain for six years following completion of the activities required by this Order copies of all records, files and data relating to hazardous substances found at the site, or related to the activities undertaken pursuant to this Order, whether or not those documents were created pursuant to this Order. Respondents shall acquire and retain copies of all documents relating to the site that are in the possession of their contractors, subcontractors, agents and employees. Respondents shall notify U.S. EPA at least sixty (60) days before any documents retained under this paragraph are to be destroyed. The documents retained under this paragraph shall be made available to the U.S. EPA upon request.

17. Respondents shall pay all past costs and oversight costs of the United States related to the Columbus Scrap site which are not inconsistent with the National Contingency Plan. The United States shall submit an itemized cost statement entitled "Itemized Cost Summary" to Respondents annually or, if sooner, not less than sixty (60) calendar days after submission of the Final Report provided for in Paragraph 25 below of this Order. Payments shall be made within sixty (60) calendar days of Respondents' receipt of the cost statement. Payments shall be made to the EPA Hazardous Substances Superfund delivered to the U.S. EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, in the form of a certified or cashier's check payable to "EPA Hazardous Substances Superfund". The face of the check should note that the payment is for the Columbus Scrap site, Superfund Site Identification Number JR. Respondents are jointly and severally liable for payment of the full amount due under this Order. A copy of the check(s) submitted must be sent simultaneously to the U.S. EPA representatives indicated in paragraph 18 below.

18. A notice, document, information, report, plan, approval, disapproval or other correspondence required to be submitted from one party to another under the Order shall be deemed submitted either when hand delivered or as of the date of receipt by certified mail, return receipt requested.

Submissions to the Respondents shall be made to the following until designation of a Project Coordinator:

Kirk N. Guy
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4299

Mark Murphy
CSX Transportation, Inc.
500 Water Street
Speed Code: J-275
Jacksonville, FL 32202

Upon designation of a Project Coordinator, submission to the Respondents shall be made to the Project Coordinator.

Submissions to the U.S. EPA shall be submitted to:

one copy:

Steven Renninger, OSC
Response Section I
U.S. EPA, Region V 5-SEDO
25089 Center Ridge Road
Westlake, Ohio 44145

one copy:

Alvin Liebling
Assistant Regional Counsel
U.S. EPA, Region V 5CS-TUB
230 South Dearborn Street
Chicago, Illinois 60604

19. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

STIPULATED PENALTIES

20. For each day the Respondents fail to submit reports, or fail to perform actions required and in accordance with a schedule contained in this Consent Order and a Work Plan approved by U.S. EPA, Respondents shall be liable as follows:

- a. For failure to commence and perform work prescribed in this Consent Order and a U.S. EPA approved Work Plan: Five Hundred Dollars (\$500) per day for one (1) to seven (7) business days of delay, and One Thousand Dollars (\$1,000) per day for each day of delay, or part thereof, thereafter;

- b. For failure to submit a Work Plan pursuant to Paragraph 1 and/or Paragraph 2 at the time required under the terms of this Order: Five Hundred Dollars (\$500) per day for the first one (1) to seven (7) business days of delay, and One Thousand Dollars (\$1,000) per day for each day of delay, or part thereof, thereafter;
- c. For failure to submit the monthly written Progress Reports pursuant to Paragraph 15, or the Final Report pursuant to Paragraph 25, at the time required under the terms of this Order: Five Hundred Dollars (\$500) per day for the first one (1) to seven (7) business days of delay, and One Thousand Dollar (\$1,000) per day for each day of delay, or part thereof, thereafter;
- d. For failure to comply with provisions of this Order after notice by U.S. EPA of noncompliance: Two Thousand Dollars (\$2,000) per day for the first one (1) to seven (7) business days of delay, and Four Thousand Dollars (\$4,000) per day for each day of delay, or part thereof, thereafter;

21. All penalties which accrue pursuant to the requirements of this Order shall be paid within ten (10) calendar days of written demand by U.S. EPA. Payment shall be made to the EPA Hazardous Substances Superfund delivered to the U.S. EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, in the form of a certified or cashier's check payable to "EPA Hazardous Substances Superfund." The face of the check should note that the payment is for the Columbus Scrap site.

22. Pursuant to 31 U.S.C. Section 3717, interest shall accrue on any amount of overdue stipulated penalties at a rate established by the United States Treasury. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires.

23. Payment of Stipulated Penalties will not relieve Respondents from complying with the terms of this Consent Order. U.S. EPA retains the right to seek any remedies or sanctions available to U.S. EPA by reason of Respondent's noncompliance with the provisions of this Consent Order that are not otherwise expressly limited by these Stipulated Penalty provisions.

PENALTIES FOR NONCOMPLIANCE

24. Except as provided under the provisions of paragraph 20 hereof, Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that violation or subsequent failure or refusal to comply with this Order and any Work Plan approved under this Order, or any portion thereof, may subject the Respondents to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues; in addition, failure to properly provide removal action under the terms of this order, or other subsequent orders issued by U.S. EPA, may result in liability for punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C Section 9607(c)(3).

TERMINATION AND SATISFACTION

25. The Respondents shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the Facility, a description of the locations and types of hazardous substances encountered at the Facility upon the initiation or performance of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, subcontracts, permits). The final report shall also include an affidavit from the person who supervised or directed the preparation of that report for each Respondent. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within thirty (30) days of completion of the work required by the U.S. EPA.

26. The provisions of this Order shall be deemed satisfied upon payment by Respondents of all sums due under the terms of this Order and upon the Respondents' receipt of written notice from U.S. EPA that the Respondents have demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks consistent with this Consent Order which U.S. EPA has determined to be necessary, have been completed.

INDEMNIFICATION

27. The Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents, contractors, subcontractors, successors or assigns, in carrying out the activities pursuant to this Order. The United States Government shall not be held as a party to any contract or subcontract entered into by or for the Respondents in carrying out activities under this Order.

RESERVATION OF RIGHTS

28. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

29. The U.S. EPA and the Respondents reserve all rights, claims, demands, and defenses, including defenses and denials of and to all determinations and findings, that they may have as to each other except as otherwise provided in this Order pursuant to any available legal authority. Nothing in this Order shall expand the Respondents' ability to obtain preenforcement review of U.S. EPA actions. Notwithstanding any reservation of rights, Respondents agree to comply with the terms and conditions of this Order and consent to the jurisdiction of the U.S. EPA to enter into and enforce this Order.

30. Nothing herein is intended to release, discharge, limit or in any way affect any claim, causes of action or demands in law or equity which the parties may have against any persons, firm, trust, joint venture, partnership, corporation, or other entity not a party to this Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, disposal, release or threat of release of any hazardous substance, hazardous waste, contaminant or pollutant at or from the site. The parties to this Order hereby expressly reserve all rights, claims, demands and causes of action they may have against any and all other persons and entities who are not parties to this Order.

31. Nothing herein shall be construed: 1) to prevent U.S. EPA from exercising its right to disapprove of work performed by the Respondents; 2) to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this order; 3) to prevent U.S. EPA from taking other legal or equitable action not inconsistent with the Covenant Not To Sue in paragraphs 42 through 44 of this Order; 4) to prevent U.S. EPA from requiring the Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law; or 5) to prevent U.S. EPA from undertaking response actions at the site.

FORCE MAJEURE

32. The Respondents shall cause all work to be performed within the time limits set forth herein and in an approved Work Plan, unless performance is delayed by "force majeure". For purposes of this Order, "force majeure" shall mean an event arising from causes entirely beyond the control of the Respondents and their contractors and subcontractors which delays or prevents the performance of any obligation required by this Order. Increases in costs and financial difficulty are examples of events that are not considered to be beyond the control of the Respondents.

33. Respondents shall notify the OSC within 24 hours after Respondents become aware of any event which Respondents contend constitutes a force majeure, with subsequent written notice within seven (7) calendar days of the event. Such written notice shall describe: 1) the nature of the delay, 2) the cause of the delay, 3) the expected duration of the delay, including any demobilization and remobilization resulting from the delay, 4) the actions which will be taken to prevent or mitigate further delay, and 5) the timetable by which the actions to mitigate the delay will be taken. Respondents shall implement all reasonable measures to avoid and/or minimize such delays. Failure to comply with the notice provision of this paragraph shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. The Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay. If U.S. EPA determines a delay is or was attributable to a force majeure, the time period for performance under this Order shall be extended as deemed necessary by the OSC to allow performance.

DISPUTE RESOLUTION

34. The Parties to this Order on Consent shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order on Consent or any Work required hereunder.

35. In the event that any dispute arising under this Order on Consent is not resolved expeditiously through informal means, any party desiring dispute resolution under this Section shall give prompt written notice to the other parties to the Order.

36. Within ten (10) calendar days of the service of notice of dispute pursuant to Paragraph 35 above, the party who gave notice shall serve on the other parties to this Order a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). The opposing parties shall serve their Statement of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the complaining party's statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work, they shall be shortened upon and in accordance with notice by U.S. EPA.

37. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to the preceding paragraphs.

38. Upon review of the administrative record, the Director of the Waste Management Division, U.S. EPA, Region V, shall issue a final decision and order resolving the dispute consistent with the NCP and the terms of this Order.

NON-ADMISSION

39. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of liability or of U.S. EPA's findings or determinations contained in this Order in any proceeding other than a proceeding to enforce the terms of this Order.

CERCLA FUNDING

40. The Respondents waive any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA for, or arising out of, any activity performed or expenses incurred pursuant to this Consent Order.

41. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

COVENANT NOT TO SUE

42. Upon termination and satisfaction of this Administrative Order pursuant to its terms, for and in consideration of the complete and timely performance by Respondents of the obligations agreed to in this Order, U.S. EPA hereby covenants not to sue Respondents for judicial imposition of damages or civil penalties for any failure to perform obligations agreed to in this Order except as otherwise reserved herein.

43. Performance of the terms of this Order resolves and satisfies the liability of the Respondents to U.S. EPA for work satisfactorily performed under this Order. U.S. EPA recognizes that, pursuant to Section 113 of CERCLA, the Respondents, upon having resolved their liability with the U.S. EPA for the matters expressly covered by this Order, shall not be liable for claims for contribution regarding matters addressed in this Order. Nothing in this Order precludes the Respondents from asserting any claims, causes of action or demands against potentially responsible parties who are not parties to this Order for indemnification, contribution, or cost recovery.

44. In consideration of the actions to be performed by the Respondents under this Order, the U.S. EPA covenants not to sue the Respondents, their successors or assigns for any and all claims which are available to the U.S. as against the Respondents under Sections 106 and 107 of CERCLA concerning all matters satisfactorily performed.

SUBSEQUENT AMENDMENT

45. This Consent Order may be amended by mutual agreement of U.S. EPA and the Respondents. Any amendment of this Consent Order shall be in writing, signed by U.S. EPA and the Respondents and shall have as the effective date, that date on which such amendment is signed by U.S. EPA.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, contractors, subcontractors, successors and assigns, to this document.

Agreed this 2ND day of APRIL, 1991.

Columbus Scrap Corporation

By Gary Reynolds, Executive Vice President and CEO / RK per telephone authorization
(Name) (Title)

CSX Transportation, Inc.

By Rosen VP - Risk Mgt.
(Name) (Title)

The above being agreed and consented to, it is so ORDERED

this 10th day of April, 1991.

By David A. Ullrich

David A. Ullrich, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V, Complainant

Potentially Responsible Parties Receiving 106 Orders

Columbus Scrap Corporation
c/o Kirk N. Guy
100 South Third Street
Columbus, Ohio 43215-4299

CSX Transportation Company
c/o Dennis P. Reis
Sidley & Austin
Suite 5400
One First National Plaza
Chicago, Illinois 60603